

REMARKS

I. STATUS OF THE CLAIMS

Claims 18-31 have been canceled. New claims 32-38 have been added. Support for the new claims can be found in the claims as originally filed and throughout the specification. For example, new independent claim 33 corresponds to original claim 18 with the incorporation of at least some of the limitations present in original claims 20-24, 26, 27 and 29. No new matter has been added by the addition of any of the new claims.

II. THE REJECTION UNDER 35 U.S.C. § 102(b)

Claims 18, 19, 21, 23 and 25 have been rejected under 35 U.S.C. § 102(b) as being anticipated by EP 847 992 to Suzuki *et al.* ("*Suzuki*"). The Examiner states that *Suzuki* teaches the benzamide derivative claimed by Applicant in claim 14 along with several of the same generally used diluents or excipients (*e.g.*, binders, extenders, fillers, moisturizers, disintegrants, surfactants and lubricants) claimed by Applicants. In addition, according to the Examiner, *Suzuki* also teaches the pharmaceutical dosage form of Applicants' invention. Applicants address each of the Examiner's concerns as follows:

Applicants acknowledge that *Suzuki* discloses various classes of additives to be combined with benzamide derivatives. However, *Suzuki* does not disclose the benzamides of formula (1) in combination with the particular additives recited in new independent claim 32. Because *Suzuki* does not teach each and every element of claim 32, *Suzuki* cannot anticipate claim 32. Moreover, because claims 33-38 depend from claim 1 and respectively incorporate all of the features of claim 32, claims 33-38 are also not anticipated by *Suzuki*. Therefore, Applicants respectfully request that this ground for rejection be withdrawn.

III. THE REJECTION UNDER 35 U.S.C. § 103(a)

Claims 20, 22, 24 and 26-31 are rejected as being obvious over *Suzuki* in view of the International Cosmetic Ingredient Dictionary and Handbook ("*Dictionary*"). The Examiner states that *Suzuki* does not teach the inclusion of each of the specific excipients claimed by Applicants but that the *Dictionary* may be relied upon for teaching the excipients that are not disclosed by *Suzuki*. According to the Examiner, one skilled in the art would have been

motivated to include the well known excipients taught by the *Dictionary* in the compositions described by *Suzuki*. Applicants address each of the Examiner's concerns as follows.

The present invention may be characterized by Applicants' finding that some of the claimed benzamide derivatives, while stable by themselves, become unstable in the presence of certain additives. Such additives are therefore not suitable in pharmaceutical compositions containing these benzamide derivatives. Neither *Suzuki* nor the *Dictionary* teach or suggest that the benzamide derivatives of Applicants' invention may become destabilized by combination with certain excipients. Further, *Suzuki* does not teach or suggest the specific excipients that are suitable for combining with the benzamide derivatives of Applicants' invention. Because *Suzuki* discloses that all well known excipients, without limitation, may be included in their benzamide formulations, one skilled in the art would not be motivated to choose the particular excipients claimed by Applicants that do not result in destabilization of the benzamide derivatives of Applicants' invention. The *Dictionary* cannot remedy this deficiency present in *Suzuki*. Therefore, Applicants respectfully request that this ground for rejection be withdrawn.

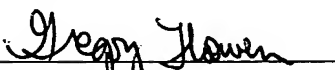
IV. CONCLUSION

In view of the foregoing, Applicants respectfully request entry of the amendments and believe that the claims are in condition for allowance. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTION PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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